IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIFTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION Nos. 9440 of 2003 and 2827 of 2004

WRIT PETITION No. 9440 of 2003:

Between:

J.B.P.Vijaya Kumar, S/o. Ashirvadam,
R/o.Mariampeta, Perala Post, Chirala Mandal, Prakasam District.

..... PETITIONER

AND

1 The R.C.M.Aided Elementary School, Perala Post, Chirala, Prakasam District rep. by its Correspondent.
2 The Commissioner and Director of School Education Government of Andhra Pradesh, Hyderabad.
3 The District Educational Officer, Prakasam District at Ongole.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue an order, direction or writ particularly one in the nature of writ of Mandamus or any other appropriate writ declaring the action of the respondent No.1 in not continuing the petitioner at R.C.M Elementary School at Chirala is illegal, arbitrary and unjust and consequently direct the first respondent to continue the petitioner at RCM Elementary school, Chirala by implementing the orders of the Commissioner and Director of School Education issued in proceedings RC.No. 5522/D1-4/2002 dated 07.02.2003.

Counsel for the Petitioner:MR.G.V.SHIVAJI

Counsel for the Respondent No.1 : Ms.K.N.Vijayalakshmi

Counsel for the Respondent Nos.2 and 3: GP FOR SCHOOL EDUCATION

WRIT PETITION No. 2827 of 2004:

Between:

J.B.P.Vijaya Kumar, S/o. Ashirvadam,
R/o.Mariampeta, Perala Post, Chirala Mandal, Prakasam District.

..... PETITIONER

AND

1 The Government of Andhra Pradesh, rep. by its Secretary, School Education, Secretariat, Hyderabad.
2 The Commissioner and Director of School Education Government of Andhra Pradesh, Hyderabad.
3 The District Educational Officer, Prakasam District at Ongole.
4 The R.C.M.Aided Elementary School, Perala Post, Chirala, Prakasam District rep. by its Correspondent.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus calling for the records relating to the impugned Proceedings Rc.No.5522/D1-4/2002, dated 25-11-2003 on the file of the 2nd respondent and quash the same as the same is highly illegal, arbitrary and violative of Art. 14 of the Constitution of India and also violative of principles of natural justice.

Counsel for the Petitioner:MR.G.V.SHIVAJI

Counsel for the Respondent No.1 (in W.P.9440 of 2003) and No.4 (in W.P.2827 of 2004): MS.K.N.Vijayalakshmi

Counsel for the Respondent Nos.2 and 3 (in W.P. 9440 of 2003) and 1 to 3 in (W.P.No.2827 of 2004): GP FOR EDUCATION

The Court made the following :

COMMON ORDER:

Since the parties and the subject matter in both these writ petitions are one and the same, they are being disposed of by this common order.

These writ petitions are filed seeking a declaration that the orders dated 07.02.2003 and 25.11.2003, respectively, passed by the second respondent-Director and Commissioner of School Education, Hyderabad are arbitrary and illegal.

The parties are hereinafter referred to, as they are arrayed in W.P.No. 2827 of 2004.

The brief facts that are necessary for disposal of these writ petitions are as follows:

The petitioner was appointed as a Secondary Grade Teacher in fourth respondent-institution on 24.01.1997. The fourth respondent has been running different schools and each unit is separate and no common seniority for the employees working in all the units is being maintained by it. The fourth respondent has served the proceedings dated 10.06.2002 on the petitioner on 09.07.2002 transferring him to RCM School, Votlabailu from Chirala. The petitioner made a representation dated 17.07.2002 to the third respondent-District Educational Officer for retaining him at RCM Aided elementary School at Chirala, but the same was rejected vide proceedings dated 09.11.2002. Aggrieved by the same, the petitioner made a representation to the second respondent on 22.12.2002. Initially, the second respondent issued proceedings dated 07.02.2003 directing the third respondent to instruct the fourth respondent to retain the petitioner at Chirala duly verifying the vacancy position and in case of non-availability of the post of SGT at Chirala, to any nearest possible school to Chirala. In spite of the said direction, respondents 2 and 3 failed to take any action. Hence the petitioner filed W.P.9440 of 2003 seeking a direction to the fourth respondent to continue him in the fourth respondent institution and this Court passed an interim order on 13.05.2003 directing the respondents to continue the petitioner in the fourth respondent-institution and it was also made absolute on 14.08.2003 while dismissing the application filed by the fourth respondent to vacate the interim order. Aggrieved by the same, the fourth respondent filed W.A.No. 1622 of 2003 and the same was disposed of on 03.11.2003 with an observation that the pendency of the W.P.No.9440 of 2003 will not come in the way of second respondent to pass any fresh order in the matter.

Taking advantage of the observation made in W.A.No.1622 of 2003, the second respondent, basing on the representation of the fourth respondent, issued the proceedings dated 25.11.2003 reviewing the earlier order dated 07.02.2003 and made an observation that the fourth respondent can transfer the petitioner to any place as per wish. As per G.O.Ms.No.104, dated 30.01.1978, the transfer of teachers under private managements including machine managements having more than one school shall be made within the district itself subject to the maintenance of common seniority list. But in the present case, no common seniority list is being maintained. Hence, he filed W.P.No. 2827 of 2004 seeking to quash the proceedings dated

25.11.2003 issued by the second respondent.

The grievance of the petitioner is that the proceedings dated 25.11.2003 were issued without affording any reasonable opportunity to him and as no common seniority list is being maintained by the fourth respondent-institution for all the schools run by it, his seniority has been affected.

The first respondent filed a counter-affidavit stating that the petitioner was not regularly attending to the school and caused inconvenience to the students and in spite of that attitude of the petitioner, the management allowed him to continue for six years at Chirala. For the last one and half year the petitioner signs in the register and leaves the school to do his business and neglected his duties. The management is empowered to transfer the teachers on administrative grounds and if it is a transfer of a post from aided school to unaided school, the permission of the District Educational Officer is necessary and the petitioner was transferred after obtaining due permission from the District Educational Officer. Questioning the same, the petitioner filed W.P.No. 10392 of 2002 and as per the directions given of this Court in the said writ petition, the representation of the petitioner was considered and rejected by the second respondent after perusing the records and after calling for the remarks from the Management. The transfer of the petitioner is purely on administrative grounds and no right of the petitioner is infringed so as to call for interference by this Court. Hence, it prays to dismiss the writ petitions.

The third respondent filed a detailed counter-affidavit stating that the petitioner made a representation to the second respondent to set aside the proceedings dated 10.06.2002 and as per the directions given by the second respondent on 07.02.2003, the third respondent has issued necessary instructions to the fourth respondent on 19.02.2003. The petitioner was transferred as per rules and the transfer made by the management is an incidence of service and therefore, the writ petition is liable to be dismissed.

The fourth respondent also filed a counter-affidavit on the same lines as that of the first respondent. However, it is further stated that the management is the competent authority to transfer the petitioner on administrative grounds from one school to another and therefore, the seniority and service conditions of the petitioner will not be affected. Hence it prays to dismiss the writ petitions.

Learned counsel for the petitioner contended that the fourth respondent

institution is running four schools in different areas and each school is a separate unit and there is no common seniority that is being maintained in all the four schools and that the Commissioner and Director of School Education-second respondent, passed the impugned order dated 25.11.2003 without giving any opportunity to the petitioner to put forward his grievance and therefore, he prays to set aside the same.

On the other hand, the learned Government Pleader appearing for respondents 1 to 3 contended that the impugned orders have been passed basing on the material available on record and also after calling for the remarks and report from the fourth respondent and report, keeping in view of the directions of this Court in Writ Appeal No.1622 of 2003 and hence, the order under challenge does not suffer from any incurable infirmities so as to call for interference by this Court under Article 226 of the Constitution of India.

Learned counsel for the fourth respondent contended that for the last four years the petitioner was not attending the classes and therefore, he was transferred from one school to another and the seniority and the service conditions will not in any way be affected and hence she prays to dismiss the writ petition.

Admittedly, the petitioner herein is working as a Special Grade Teacher in the fourth respondent institution from 1997 onwards. According to him, the Management of the fourth respondent school is running four different schools and each school is a separate unit for the purpose of seniority and recruitment and as such there is no common seniority list of employees working in all the institutions being maintained by the management. Therefore, by virtue of the impugned action, the petitioner will not only loose seniority but also has to work in a different school. The impugned order is passed basing on the representation of the fourth respondent school without giving any opportunity to the petitioner.

On the other hand, the grievance of the fourth respondent-school is that the petitioner is not attending the classes and he simply marking his signature in the attendance register and since a common seniority list is being prepared by the management in all the schools, the seniority of the petitioner will not in any way be affected.

The short question that falls for consideration in these writ petitions is that whether

the petitioner should be given a notice or opportunity of making representation to the second respondent before passing the impugned order dated 25.11.2003.

As seen from the proceedings dated 25.11.2003, the fourth respondent filed an appeal before the second respondent to pass fresh orders reviewing the orders dated 07.02.2003 pertaining to the transfer of the petitioner on administrative grounds from RCM Aided Elementary School, Chirala to Votlabollu. In the writ appeal filed by the fourth respondent in W.A.No. 1622 of 2003, a direction was given to list the writ petition No. 9440 of 2003 before the learned Single Judge on 18.11.2003 subject to part heard and in the meanwhile the Division Bench also clarified that the pendency of the writ petition will not come in the way of the Commissioner and Director of School Education to pass any fresh order. Therefore, in view of the orders passed by the Division Bench, the Commissioner can take appropriate decision. The order only goes to show that the second respondent has examined the appeal of the fourth respondent and allowed the transfer of the petitioner to any place as the fourth respondent wishes to transfer him, since the Management is the competent authority to pass such order. However, it was also stated that order shall be subject to the outcome of writ petition No.9440 of 2003. The said order does not indicate anything about giving of opportunity to the petitioner. The Commissioner and Director of School Education has taken into consideration the representation or appeal of the fourth respondent, but has not taken into consideration the grievance of the petitioner in view of the fact that no opportunity was afforded to him. The grievance of the petitioner is that there is no common seniority list being maintained by the management in respect of all the schools and each school is a separate unit and therefore, if any order is passed transferring him from one school to another, it will have its own impact in his service conditions and also he may loose his seniority when he was transferred to one school from another.

Learned counsel is right in contending that if no common seniority is being maintained in respect of the four schools, then it will have its own impact on the service conditions of the petitioner. Therefore, that aspect of the case has to be decided by the Commissioner and Director of School Education in accordance with the Rules and Regulations and also after duly taking into consideration the representation of the fourth respondent-institution and also the representation of the petitioner. So, after considering all these aspects, an appropriate decision has to be

taken by the Commissioner and Director of School Education.

The order, dated 25.11.2003, *prima facie*, suffers from infirmity for the reason that no opportunity was afforded to the petitioner, it is liable to be set aside for violation of the principles of natural justice. As the order dated 25.11.2003 is passed revising the order dated 07.02.2003, the order dated 07.02.2003 is also liable to be set aside.

Accordingly, the orders dated 07.02.2003 and 25.11.2003 are set aside and the matter is remitted to the second respondent with a direction to take appropriate decision in accordance with the Rules and regulations, considering the representations of the petitioner and the fourth respondent and after giving reasonable opportunity to all the parties and considering the fact that if the respondent-school does not have any teacher, ultimately the children will be affected parties, pass appropriate orders within a period of two months from the date of receipt of a copy of this order. Keeping in view of the fact that the academic year has already been started, the Commissioner shall take effective steps in disposing of the matter.

Accordingly, the writ petitions are allowed. No costs.

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15.07.2005

Note: Furnish C.C., in one week.

(B/O)

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To

1 The Secretary, Government of Andhra Pradesh, School Education, Secretariat, Hyderabad.
2 The Commissioner and Director of School Education Government of Andhra Pradesh, Hyderabad.
3 The District Educational Officer, Prakasam District at Ongole.
4 Two C.Cs to the G.P., for School Education, High Court Buildings, Hyderabad (OUT).

5 2 CD copies.